

TO: All parties to Fiber Technologies Networks, L.L.C., D.T.E. 01-70

FROM: Jesse S. Reyes, Hearing Officer

RE: Hearing Officer Ruling on Motions for Leave to Reply to Opposition to Motion for Summary Judgment

DATE: March 28, 2002

---

HEARING OFFICER RULING ON MOTIONS OF METROMEDIA FIBER NETWORK SERVICES, INC. AND FIBER TECHNOLOGIES NETWORKS, L.L.C. FOR LEAVE TO FILE REPLY TO SHREWSBURY'S ELECTRIC LIGHT PLANT OPPOSITION TO FIBERTECH MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

On March 1, 2002, Fiber Technologies Networks, L.L.C. ("Fibertech") filed a motion for summary judgment in this proceeding. By Hearing Officer Memorandum, dated March 1, 2002, all replies to this motion were due on March 22, 2002 (Hearing Officer Memorandum at 1). On March 7, 2002, Metromedia Fiber Network Services, Inc. ("MFN") filed a letter in support of Fibertech's motion for summary judgment and a motion for leave to file a reply to any opposition of Shrewsbury's Electric Light Plant ("SELP") to the motion for summary judgment ("MFN Motion").

On March 7, 2002, SELP filed an opposition to the MFN Motion and a motion to strike MFN's letter in support of Fibertech's motion for summary judgment ("SELP-MFN Opposition"). On March 8, 2002, Fibertech filed a motion for leave to reply to SELP's opposition to the motion for summary judgment ("Fibertech Motion"). On March 13, 2002, SELP filed an opposition to Fibertech's motion for leave to reply ("SELP-Fibertech Opposition").

## II. POSITIONS OF THE PARTIES

### A. MFN Motion

On March 7, 2002, MFN filed a letter of support of Fibertech's motion for summary judgment (MFN Motion at 1). As part of this letter, if the Department grants the Fibertech Motion, or if SELP files a cross motion for summary judgment, MFN requests leave to file a reply to SELP's filings (id.).

SELP opposes the MFN Motion and requests that the Department strike the filing in support of Fibertech's motion for summary judgment because MFN is a limited participant in this proceeding (SELP-MFN Opposition at 1). SELP argues that the hearing officer limited MFN's participation in this proceeding to filing briefs, and thus, MFN is not permitted to file letters in support of or opposition to motions filed by parties in this proceeding (id.). SELP further argues that MFN did not appeal that ruling (id. at 1, n.1). Therefore, SELP asserts that MFN's attempt to "register its position" is not appropriate because a limited participant's positions with respect to motions filed in the course of a proceeding are irrelevant (id. at 1).

### B. Fibertech Motion

Fibertech requests leave to reply to SELP's opposition to its motion for summary judgment to address new matters raised in the opposition and not to reiterate the motion (Fibertech Motion at 1). Fibertech argues that the hearing officer has discretion to permit replies (id. citing 200 C.M.R. §§ 1.04(5)(d), 1.06(e)). Fibertech further argues that the "Department customarily allows replies for briefing on the merits and that this custom is appropriately followed where the pending motion is a dispositive motion that may entirely or partially resolve the case on the merits" (id.).

SELP argues that the Fibertech Motion should be denied (SELP-Fibertech Opposition at 1). Although SELP concedes 220 C.M.R. § 1.04(5)(d) gives a hearing officer discretion to permit "replies to replies," SELP argues that this discretion does not extend to motions for summary judgment. SELP argues that the Department's rules include a specific regulation, relative to motions for summary judgment and that this regulation does not permit additional replies (id. citing 220 C.M.R. § 1.06(6)(e)<sup>1</sup>). In the alternative, if the hearing officer grants the Fibertech Motion, SELP requests the opportunity to file a reply to Fibertech's reply.

---

<sup>1</sup> This section provides that "the presiding officer shall afford other parties a reasonable time to respond in writing and may, in his or her discretion, permit oral argument on the motion." 220 C.M.R. § 1.06(6)(e).

### III. ANALYSIS AND FINDINGS

#### A. MFN Motion

MFN is a limited participant in this proceeding. By hearing officer ruling dated October 26, 2001, MFN is permitted to file briefs and reply briefs (D.T.E. 01-70, at 6 Hearing Officer's Ruling on Procedural Schedule and Petition to Intervene (Oct. 26, 2001)). MFN's participation does not include the right to reply to or oppose motions filed by the parties in the course of this proceeding. Therefore, I DENY MFN's motion for leave to reply to SELP's opposition. For the same reasons, I GRANT SELP's request to strike MFN's letter in support of Fibertech's motion for summary judgment.

#### B. Fibertech Motion

Finding that it may aid the Department in consideration of this matter, I GRANT Fibertech's motion for leave to reply to SELP's opposition to Fibertech's motion for summary judgment. I also GRANT SELP's request to be permitted to reply to Fibertech's reply. Fibertech shall file its reply with the Department no later than the close of business on Thursday, April 4, 2002. SELP shall file with the Department its reply to Fibertech's reply no later than the close of business on Thursday, April 11, 2002.

Pursuant to 220 C.M.R. § 1.06(6)(d)(3), any appeal to the Commission of these rulings must be filed with the Department no later than the close of business on Thursday, April 4, 2002. Responses to an appeal must be filed within five (5) business days of the filing of the appeal. A copy of this ruling must accompany any appeal.